MAURICE DUVAL
MARIANNE DUVAL

IBLA 82-1081 Decided October 12, 1982

Appeal from decisions of the Oregon State Office, Bureau of Land Management, rejecting in part mineral patent application OR 34116.

Affirmed.

1. Acquired Lands

   Land acquired by the United States does not become public land by the mere process of its acquisition, and, in the absence of specific statutory direction to the contrary, is not open for location of mining claims under 30 U.S.C. § 22 (1976).

2. Administrative Authority: Generally

   The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by laches, neglect of duty, failure to act, or delays in the performance of their duties.

3. Mining Claims: Withdrawn Land

   A mining claim located on land then segregated and closed to mineral entry is properly declared null and void ab initio.

APPEARANCES: T. Leonard O'Byrne, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Maurice and Marianne Duval have appealed from decisions of the Oregon State Office, Bureau of Land Management (BLM), dated May 27, 1982, rejecting in part mineral patent application OR 34116.

On December 30, 1959, appellants located 10 placer mining claims, known as Fox Nos. 1 through 10, located in secs. 18, 19, 30, and 31, T. 21 S., R. 12 W., Willamette meridian, Douglas County, Oregon. They relocated the claims on January 8, 1972. These claims were the subject of a previous contest hearing and appeal within the Department. United States v. Maurice Duval, 53 IBLA 341 (1981). This Board there held that a preponderance of the evidence established that a qualifying discovery had been made on the claims prior to a withdrawal of the land from mineral entry. 1/ On May 27, 1982, BLM issued two decisions by which it declared all or parts of the mining claims null and void ab initio and rejected in part appellants' mineral patent application. 2/ BLM rejected certain claims and portions of other claims because they were on acquired lands of the United States or private lands conveyed by the United States without a reservation of the minerals, and therefore were not open to entry and location under the general mining law. BLM also informed the appellants that their descriptions of certain of the rejected lands did not conform to the public survey descriptions.

In their statement of reasons, appellants have argued that BLM waived the opportunity to raise the restriction on entry upon acquired lands because the claims had already been the subject of contest proceedings within the Department and that there was "nothing in any record" that the lands were acquired lands. Appellants have also asserted that their descriptions were adequate.

[1] The acquired lands that are the subject of this appeal are shown on the public records as owned and held by the United States. However, land acquired by the United States does not become public land by the mere process of its acquisition, and, in the absence of specific statutory direction to the contrary, is not open for location of mining claims under 30 U.S.C. § 22 (1976). 43 CFR 3811.2-9; J. C. Babcock, 25 IBLA 316 (1976). Appellants have demanded issuance of a patent for all the lands applied for notwithstanding that parts thereof are acquired lands and unavailable to mining location. Without authority from Congress, this Department may not issue a patent divesting the United States of its title to Federal lands. Alienation of the public interests in lands administered by this Department can occur only within the limits authorized by law. See United States v. California, 332 U.S. 19, 40 (1947); Union Oil Company of California v. Morton, 512 F.2d 743, 748 (9th Cir. 1975).

[2] Appellants have suggested that the public rights and interests were waived through the act of an administrative officer. Waiver is the intentional or voluntary relinquishment of a known right. Black's Law Dictionary, 1417 (5th ed. 1979). While the delay in the BLM decision is unfortunate, it is well established that the authority of the United States to

---

1/ An application of withdrawal for recreation purposes dated Jan. 18, 1962, was submitted by the United States Forest Service. The mineral land sought by appellants became part of the Oregon Dunes National Recreation Area by enactment of P.L. 92-260 on Mar. 23, 1972, 16 U.S.C. § 460z (1976).

2/ Rejected portions were parts of Fox Nos. 2, 8, 9, and all of Fox Nos. 1, 4, and 5.

enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a); Virgil V. Peterson, 66 IBLA 156 (1982); Otay Mining Co., 62 IBLA 166 (1982). The United States, which holds its interest in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of public lands cannot by their conduct cause the United States to lose its valuable rights by their acquiescence, laches, or failure to act. United States v. California, supra.

Appellants have argued that because the issues were not raised by the Department in its earlier proceedings they cannot be raised now. A mining location which has not gone to patent is of no higher quality, and no more immune from attack and investigation, than unpatented claims under the homestead and kindred laws; and, so long as the legal title remains in the United States, the Land Department, in virtue of its general statutory duty and function, is empowered, after proper notice and upon adequate hearing, to determine whether such a location is valid, and, if found invalid, to declare it null and void. "In other words, the power of the department to inquire into the extent and validity of rights claimed against the Government does not cease until the legal title has passed." Cameron v. United States, 252 U.S. 450, 460 (1920). The Secretary has broad plenary powers and, so long as legal title remains in the United States, there is continuing jurisdiction in the Department to consider all issues in land claims. Schade v. Andrus, 638 F.2d 122, 125 (9th Cir. 1980); Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364 (9th Cir. 1976). The Secretary is not estopped by principles of res judicata or finality of administrative action from correcting or reversing an erroneous action or decision by his subordinates. Ideal Basic Industries, Inc., supra at 1368.

BLM rejected a portion of the Fox No. 9 claim because it was on patented land which passed in 1893 from the United States without a reservation of minerals, and was not thereafter available for the location of mining claims. Mining claims located on land so patented are null and void ab initio. Floyd E. Benton, 62 IBLA 243 (1982); Ralph Memmott, 61 IBLA 116 (1982).

[3] It is well established that a mining claim located on acquired land then closed to mineral entry is properly declared null and void ab initio. Tom Brown, 37 IBLA 381 (1978), aff'd, Brown v. Department of the Interior, 679 F.2d 747 (8th Cir. 1982); Rawls v. United States, 566 F.2d 1373 (9th Cir. 1978). Appellants have never possessed an interest in the rejected lands through which they can now claim a right. The Secretary is charged with seeing that all valid claims are recognized, invalid ones eliminated, and the rights of the public preserved. Cameron v. United States, supra; Palmer v. Dredge Corp., 398 F.2d 791 (9th Cir. 1968); United States v. Ernest Higbee, 52 IBLA 83 (1981).

The official land title records maintained by BLM gave notice that most of the subject lands were acquired July 14, 1938, and therefore withdrawn from mining location, and that one tract was patented in 1893 with no reservation of minerals. Whether or not appellants knew that part of what they

sought to patent was acquired or private land, or that it took over 20 years for someone to bring to the attention of those concerned the actual status of the land, does not matter. The subject lands of this appeal were segregated from mineral entry before appellants located their claims. Reliance upon information supplied by a public employee or on records maintained by land offices cannot operate to divest the United States of any right not authorized by law. 43 CFR 1810.3(c); Floyd E. Benton, supra.

In its decision letter, BLM brought to appellants' attention errors in their land descriptions. Appellants have argued that their descriptions are adequate. As the mis-described lands were those segregated from mineral entry and appellants' mining claims were void ab initio as to them, we see no reason to address that issue.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge